

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8945 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

RAJESH CHANDULAL PUROHIT

Versus

SAURASHTRA UNIVERSITY

Appearance:

MR DD VYAS for Petitioner

MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 05/07/96

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order of the respondent university dated 03.01.1996, whereby the petitioner has been held guilty of using unfairmeans and has been prohibitted from appearing in any examination of the University till 30.06.1996.

2. The brief facts giving rise to the present Special Civil Application are that the petitioner appeared in the T.Y.B.Com. examination held in the month of April 1995 at the Center Madvani Arts & Commerce College, Porbandar. The result of the said examination was declared on 27th June 1995, but the petitioner's result was kept in abeyance. The petitioner did not hear anything from the University though he had been inquiring from the Principal. However, the programme for examination of T.Y.B.Com. for October 1995 was declared. He therefore sent a letter dated 5th September 1995 to the Registrar, Saurashtra University, asking to declare his result. He also submitted an application for allowing him to appear in the T.Y.B.Com. scheduled to be held in October/November 1995. The college forwarded a Form to the University whereby the petitioner received a communication dated 4th October 1995, whereby the petitioner was informed that the result of the petitioner was withheld as he was involved in COPYING CASE. The examination of the T.Y.B.Com. commenced from 2nd November 1995 and as such, the petitioner approached to this Court by way of the present Spl. C.A. This Court, while issuing the notice returnable on 20th April 1995, as an interim order, gave liberty to the respondent University to declare the result of the petitioners of T.Y.B.Com. examination held in 1995. Subsequently, by an order dated 20th October, 1995, the Court granted an interim relief in terms of para-19(b), subject to further orders that may be passed in the matter. Para 19(b) reads as follows :

"Pending hearing and final disposal of this petition, the Hon'ble Court may be pleased to direct the respondents, their servants and agents to accept the form of the petitioner for appearing in the examination of T.Y.B.Com. being held by Saurashtra University commencing from November 02, 1995 and that, they should issue the seat number to the petitioner and to permit him to appear in the said examination of T.Y.B.Com. held by Saurashtra University commencing from November 02, 1995."

3. During the pendency of this S.C.A., a notice dated 17.11.1995 was served on the petitioner. The said notice was in the matter of examination held in March/April 1995 regarding the misconduct of the candidate. It is alleged in the said notice that, on 8.4.1995, during the checking carried out by the observing party, he was found absent on the seat in the examination hall and the main answerbook which was given to him for writing

answers of the question papers was also not handed over to the Supervisor. This led to the inference that the petitioner left the examination hall alongwith the main answer book. The petitioner was further told that later on, he submitted the main answer book after taking the advantage of the situation and giving the standard answers. The petitioner was called upon to show cause within five days as to why he should not be penalised in accordance with the provisions of the Ordinance 161 (A). The petitioner was also given a liberty to produce defence witness or any other documentary evidence. He was also asked to appear before the examination disciplinary committee, if so desired. The notice was replied by the petitioner under communication dated 24.1.1995. The petitioner denied allegations. It was submitted that, in the examination hall, there were more than one supervisors appointed by the University. The answer books were distributed by them and further, the supplementary books were also supplied. The corresponding entries were made in the relevant sheets. It is submitted that if the petitioner would have left the examination hall, the matter would have been reported to the Chief Supervisor and further he would not have been allowed to re-enter in the examination hall. The petitioner asserted that he remained in the examination hall through out. He also obtained a certificate of his presence from the Senior Supervisor on 05.06.1996, who is the Principal of the College. It was further stated that a false case has been prepared by the University as the petitioner has filed the petition before the High Court, and therefore, the University has punished the petitioner debarring him from appearing in the examination by the impugned order dated 03.01.1996.

4. One Mr Vishnuprasad Joshi, Deputy Registrar, Saurashtra University has filed an affidavit controverting the petitioner's allegations. It is stated that the petitioner was one of the students who had appeared at the T.Y.B.Com. examination at Porbandar center in April 1995. The University had sent observers to supervise the conduct of the examination and to visit the class rooms where the examinations were held. Prof. Nitaben Trivedi of Dhrangadhra was sent as Observer at Porbandar to supervise the examination held at Madhwani Arts and Commerce College, Porbandar. It was reported by her that, during her checking, she noticed discrepancies in junior supervisors, stationary report and actual presence of the students and therefore, she checked each and every blocks and found students whose seat numbers were mentioned in the stationary report, were not found to be present in the class room and the answer books

which were shown to have been given to the absentee students, were not with the junior supervisor and in the stationary report of junior supervisor, the columns against the seat numbers of the absentee students were kept blank and they were not shown as absent. Therefore, she asked the junior supervisor to write the word "absent" where the students were absent. Accordingly, the supervisor marked absence of the students who were not found in the examination hall and she put her own initials in the respective columns. She further stated in the report that, according to her information, the students were writing answer books outside the examination hall. So, she got the list of 49 students who were absent. Out of the 49 students, 12 students were actually absent and 37 students were absent, but their absence was recorded at the instance of the supervisor and ultimately, those 37 students had submitted answer books for assessment to the respective block supervisors and the block supervisors accepted the same under pressure and submitted for assessment to the University. It is also stated that the students misbehaved with Prof. Neetaben. It is also stated that the petitioner submitted a reply to the showcause notice and also appeared before the Committee on 5th December, 1995. Prof. Neetaben was examined by the Committee as a witness in his presence. She categorically deposed that the students having roll No.3457 i.e. the petitioner was not present in the class room and the answer book bearing No.123588 shown against the student roll No.3457 in the stationary report of the junior supervisor was also not there. The report of the Observer was read over to the petitioner and he was permitted to take extract and as such, it was not necessary to give him the copy of the report. The statement of Prof. Neetaben was recorded by the Disciplinary Committee in presence of the petitioner. She stated in her deposition that she instructed the block supervisor at the time of observation that the answer books of the students who were present in the examination should be sent separately to the University in a separate bundles and there should be no others in the bundles. It is stated that, at the relevant time, there was roudism by the students, telephones were cut off by the students in order to prevent the observer to contact the police. In view of this fact, Neetaben informed the University directly instead of reporting to the principal. In the opinion of the University, Neetaben was justified in making the report directly to the University.

5. Mr D.D.Vyas, learned counsel for the petitioner submits that the decision of the respondent University is

against the principle of natural justice. It is submitted that, inspite of the specific demand, the petitioner was not supplied the copy of the report made by the Observer. The petitioner has referred to sub-clause II of the Ordinance 161(A), which provides that any document which is relied upon and are to be used against the delinquent as evidence shall be furnished to him, unless the document is considered to be of confidential in nature or preparing the copies is likely to consume substantial time and excessive labour and in that case, the Registrar may ask the candidate to inspect the record. Mr Nanavati appearing for the University submits that the petitioner was permitted to inspect the record as it was not possible to give the copy of the report.

6. In my view, it would have been better if the copy of the report would have been made available to the petitioner. However, this will not affect the merits of the case as apart from the report, the statement of the observer has been recorded in presence of the petitioner. There is a categorical statement of Prof. Neetaben that when she inspected the center, the candidates were not in the examination hall, including the petitioner. She had also instructed to send their answer books separately. Under her instructions, the candidates who were not found in the examination hall were marked "absent". The positive case of the University that the malpractice was being used at Porbandar center in collusion with the local authorities. There is also evidence to show that when Prof. Neetaben inspected the center and found that a mass malpractice is being used, the students created a scene of roudism. No malafides can be attributed to Prof. Neetaben who is said to be the Senior Professor in the College at Dhrangadhra. In fact, it appears that she was bold enough to unearth the malpractice being used at a center in the town of Porbandar which at one time had earned name for notriety. There is absolutely no reason to disbelieve the statement of Prof. Neetaben.

7. The another contention raised by the petitioner is with respect to the delay in giving the notice to the petitioner with respect to the using of unfair means. It is true that the University should have been prompt in giving a notice and in holding the inquiry in the matter of unfairness. Even though the result was declared on 27th June 1995, the first show cause notice was given on 17.11.1995 and that too, after filing of the present Special Civil Application. Such a delay in initiating the inquiry may prove fatal in appropriate cases.

However, in view of the notorious facts of the case, I am not inclined to exercise powers under Article 226 of the Constitution of India to interfere with the decision of the University.

8. In view of the aforesaid, this Special Civil Application has no merits and the same is rejected. Interim relief vacated.

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